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Application No: 10/004,089  
Response to Office Action of 01/10/2008**REMARKS**

The above-identified Final Office Action dated January 10, 2008 contained a final rejection of claims 1-17, 24-27 and 33-36. Claim 1 has been amended in an effort to **clarify** claim 1. Amended claim 1 clearly does not require a new search by the Examiner because the new language is included in the claims for clarification purposes only. As such, the foregoing amendments to the claims and the remarks below are intended to place the case in condition for allowance, or alternately in better form for consideration on appeal under 37 CFR 1.116. Thus, it is respectfully requested that the amendments to claim 1 be entered despite the finality of the present rejection.

The Office Action rejected claims 1-17, 24-26 and 33-36 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. (U.S. Patent No. 2003/0074421) in view of Jain et al. (U.S. Patent Publication No. 2003/0074421). The Office Action rejected claim 27 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kusano et al. in view of Official Notice.

The Applicant respectfully traverses these rejections based on the amendments to the claims and the arguments below.

The Applicants claimed invention includes computer-assisted equipment receiving content including audio, video and text while a remote control device receives interface instructions and controls the content, wherein after the content is received, the content is buffered in a memory device and service program programming one or more of selectors to use the buffered content to perform **freeze frame** and **instant replay** and for displaying pertinent text information on the display.

In contrast, the combination merely discloses a buffer with computer assisted equipment receiving video information (Jain et al.) and providing a user with a user interface for consumer electronic devices (Kusano et al.). Clearly, Kusano et al. in combination with Jain et al. do not disclose, teach, or suggest all of the above claimed features. For example, the combined cited references are missing the Applicant's programming the selectors to use buffered content to perform **freeze frame** and **instant replay** functions and for displaying pertinent text information on the display **while** the remote control device receives interface instructions and controls the content.

Further, Kusano et al. teach away from the Applicant's claimed invention and should **not** be used as a reference. Specifically, unlike the Applicant's claimed invention, a single consistent user interface is used in Kusano et al. that is located on the remote computer and not plural user interfaces on the consumer electronic devices (see at least Summary, paragraphs [0006], [0007] and [0064] and FIGS. 1, 2, 5 and 6-7 of Kusano et al.), which is in direct conflict with the Applicant's claimed invention.

In particular, Kusano et al. states that it only uses "one consistent user interface via which a user can control a web-enabled device; store and access locally stored data; and effectively find and access information via the internet and store the acquired information in an integrated manner with locally stored data." (see paragraph [0007] of Kusano et al.). As such, Kusano et al. requires only one consistent user interface as software operating on a central computer and not plural user interfaces that reside and operate on the individual devices, like the Applicant's claimed invention.

Consequently, because Kusano et al. require one consistent user interface that operates as software on a central computer, Kusano et al. would be rendered inoperable and unsatisfactory for its intended purpose and the principle of operation of the invention would be drastically changed if plural user interfaces were used in Kusano et al., like in the Applicant's claimed invention. As such, this "teaching away" prevents this reference from being used by the Examiner. Tec Air, Inc. v. Denso Mfg. Mich. Inc., 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999). ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

The Examiner cannot ignore this teaching away and use Kusano et al. with the benefit of hindsight. It is well-settled in the law that improper hindsight occurs when knowledge and advantages from the Applicant's disclosure is used or words or phrases are arbitrarily picked and chosen from references to recreate the Applicant's invention. Crown Operations International, Ltd. v. Solutia, Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In particular, the combination of elements in a manner that reconstructs the Applicant's invention only with the benefit of **hindsight** is insufficient to present a *prima facie case of obviousness*. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986).

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Even if the references in question seem relatively similar "...**the opportunity to judge by hindsight is particularly tempting**. Hence, the tests of whether to combine references need to be applied rigorously," especially when the Examiner uses a reference that does not explicitly disclose the exact elements of the invention or **teaches away** from the Applicant's claimed invention, which is the case here.

McGinley v. Franklin Sports Inc., 60 USPQ 2d 1001, 1008 (Fed. Cir. 2001). Since hindsight cannot be used to support the rejections, the combined cited references cannot render the Applicant's invention obvious and the rejection is improper and should be withdrawn. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.

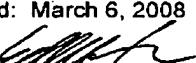
Therefore, since the Applicant's claimed elements are not disclosed, taught or suggested by the combined references and because Kusano et al. teach away from the Applicant's invention, Kusano et al. cannot be used as a reference alone or in combination with other references, and hence, the Applicant submits that the rejection should be withdrawn. *MPEP 2143*.

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (*MPEP § 2143.03*).

Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly invite the Examiner to telephone the Applicants' attorney at (818) 885-1575 if the Examiner has any questions or concerns. Please note that all correspondence should continue to be directed to:

Hewlett Packard Company  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

Respectfully submitted,  
William A. Fischer  
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By   
Edmond A. DeFrank  
Reg. No. 37,814  
Attorney for Applicant  
(818) 885-1575 TEL  
(818) 885-5750 FAX